



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JB AND MARGARET BLAUGRUND
FOUNDATION,

Plaintiff,

v.

C.A. No. 2021-1094-NAC

GUGGENHEIM FUNDS INVESTMENT
ADVISORS, LLC, RANDALL C. BARNES,
ANGELA BROCK-KYLE, THOMAS F.
LYDON, JR., RONALD A. NYBERG,
SANDRA G. SPONEM, RONALD E.
TOUPIN, JR., and AMY J. LEE,

Defendants.

**PLAINTIFF'S UNOPPOSED MOTION
FOR CLASS DISTRIBUTION ORDER**

Plaintiff JB and Margaret Blaugrund Foundation, by and through its undersigned counsel, hereby moves this Court to enter the accompanying Class Distribution Order pursuant to the terms of the Stipulation and Agreement of Settlement, Compromise, and Release (the "Stipulation") (Trans. ID 72623180) and the Court's Order and Final Judgment (Trans. ID 73585448) and submits in support of this motion the accompanying Affidavit of Luiggy Segura in Support of Plaintiff's Unopposed Motion for Class Distribution Order (the "Segura Affidavit") submitted by the Court-approved Settlement Administrator, JND Legal Administration

(“JND”).^{1,2} If approved by the Court, the Class Distribution Order will direct that, *inter alia*:

1. JND shall distribute 100% of the Net Settlement Fund to Eligible Class Members, after deducting all payments previously allowed and the payment of JND’s fees and expenses requested in this motion, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, administrative contingencies, and any escrow fees, as set forth in paragraph 10 of the Segura Affidavit (the “Distribution”).

2. Consistent with the Court-approved Plan of Allocation and as stated in paragraph 52 of the Notice disseminated to Class Members, each Eligible Class Member will be allocated a *pro rata* payment from the Net Settlement Fund equal to the product of (i) the number of Eligible Shares held by the Eligible Class Member and (ii) the “Per-Share Recovery” for the Settlement, which will be determined by dividing the total amount of the Net Settlement Fund by the total number of Eligible Shares held by all Eligible Class Members. (Segura Aff. ¶ 10(a).)

3. Consistent with the Court-approved Plan of Allocation and as stated in paragraph 53 of the Notice, payments from the Net Settlement Fund to Eligible Class

¹ The Court authorized JND to act as the Settlement Administrator in connection with the Settlement of this Action. Scheduling Order ¶ 9 (Trans. ID 72708003).

² Plaintiff incorporates by reference the definitions in the Stipulation and the Segura Affidavit, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation and/or the Segura Affidavit.

Members will be made in the same manner in which Eligible Class Members received the Merger consideration. Accordingly, if an Eligible Class Member's Eligible Shares were held in "street name" and the Merger consideration was paid into that Eligible Class Member's brokerage account, that Eligible Class Member's broker will be responsible for depositing that Eligible Class Member's Settlement payment into that same brokerage account. (Segura Affidavit ¶ 10(b).)

4. Consistent with the Court-approved Plan of Allocation and as stated in paragraph 54(i) of the Notice, with respect to Eligible Shares held of record by the DTC, through its nominee Cede, JND shall cause that portion of the Net Settlement Fund to be allocated to Eligible Class Members who held their shares through DTC Participants to be paid to DTC Participants by paying each the Per-Share Recovery times its respective Closing Security Position,³ subject to payment suppression instructions with respect to Excluded Shares and any other shares ineligible for recovery from the Settlement. (Segura Affidavit ¶ 10(c).) The DTC Participants and their respective customers, including any intermediaries, will then ensure *pro rata* payment to each Eligible Class Member based on the number of Eligible Shares beneficially owned by such Eligible Beneficial Holder. (*Id.*)

³ For each DTC Participant, the "Closing Security Position" is the number of Eligible Shares held by such DTC Participant, as reflected on the DTC Position Report. *See* Notice n.4.

5. Consistent with the Court-approved Plan of Allocation and as stated in paragraph 54(ii) of the Notice, with respect to Eligible Shares held of record as of the Closing other than by Cede (a “Non-Cede Record Position”), as nominee for DTC, JND shall make payment from the Net Settlement Fund directly to the Eligible Record Holder of each Non-Cede Record Position in an amount equal to the Per-Share Recovery times the number of Eligible Shares comprising such Non-Cede Record Position. (Segura Affidavit ¶ 10(d).)

6. Consistent with the Court-approved Plan of Allocation and as stated in paragraph 54(iii) of the Notice, for the avoidance of doubt, any person or entity who purchased Eligible Shares but had not settled those Eligible Shares at the closing of the Merger on March 7, 2022 (“Non-Settled Shares”) *shall be* treated as an Eligible Class Member with respect to those Non-Settled Shares, and a person or entity who sold those Non-Settled Shares on or before the closing of the Merger on March 7, 2022 *shall not be* treated as an Eligible Class Member with respect to those Non-Settled Shares. (Segura Affidavit ¶ 10(e).)

7. Consistent with the Court-approved Plan of Allocation and as stated in paragraph 54(iv) of the Notice, in the event that any payment from the Net Settlement Fund is undeliverable or in the event a check is not cashed by the stale date (*i.e.*, more than six months from the check’s issue date), the DTC Participants

or the holder of a Non-Cede Record Position shall follow their respective policies with respect to further attempted distribution. (Segura Affidavit ¶ 10(f).)

8. Consistent with the Court-approved Plan of Allocation and as stated in paragraph 54(v) of the Notice, any Class Member that has been informed by the Internal Revenue Service that he, she, or it is subject to backup withholding under the provisions of the Internal Revenue Code must contact the Settlement Administrator at info@FMOSTockholdersLitigation.com to inform the Settlement Administrator that he, she, or it is subject to backup withholding. (Segura Affidavit ¶ 10(g).)

9. For the avoidance of doubt, to the extent that any record owner, any DTC Participants, or their respective customers, including any intermediaries, took or permitted actions that had the effect of increasing the number of shares of FMO common shares of beneficial interest as of the closing of the Merger, whose shares were converted into shares of KYN common stock and entitled to payment of the Merger consideration, whether through permitting naked short-selling or the cash settlement of short positions or through any other means (“Increased Merger Consideration Entitlements”), such record owner, DTC Participants, or their respective customers (including intermediaries) will be responsible for paying to the ultimate beneficial owners of such Increased Merger Consideration Entitlements an amount equal to the Per-Share Recovery times the number of the Increased Merger

Consideration Entitlements. Whether DTC, any DTC Participant, or DTC Participants' customers are entitled to receive such funds from any such short-seller is not before this Court. (Segura Affidavit ¶ 10(h).)

10. Following the distribution of the Net Settlement Fund to DTC Participants, inquiries by Eligible Class Members regarding payment of the Net Settlement Fund should be made directly to DTC Participants, such as banks or brokerage firms, through which they beneficially owned Eligible Shares. (Segura Affidavit ¶ 10(i).)

11. In order to encourage Eligible Class Members to promptly cash their checks, and to avoid or reduce future expenses relating to unpaid checks, all Distribution checks will bear a notation "CASH PROMPTLY, VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [6 MONTHS AFTER ISSUE DATE]." (Segura Affidavit ¶ 10(j).)

12. All undeliverable or uncashed payments returned to JND by DTC Participants or the holder of a Non-Cede Record Position will be available for further distribution provided that such distribution is economically feasible. At such time as Plaintiff's Counsel, in consultation with JND, determines that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the

payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to the Combined Campaign for Justice. (Segura Affidavit ¶ 10(k).)

13. Paper copies of all supporting documentation may be destroyed one year after the distribution of the Net Settlement Fund, and electronic copies of the same may be destroyed one year after all funds in the Net Settlement Fund have been distributed. (Segura Affidavit ¶ 10(l).)

14. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Eligible Class Members, and release and discharge all Persons involved in the investment, administration, distribution, or taxation of the Settlement Fund or the Net Settlement Fund, from any and all claims arising out of such involvement, and bar all Class Members, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Plaintiff, Plaintiff's Counsel, the Settlement Administrator (JND), or any other agent retained by Plaintiff or Plaintiff's Counsel in connection with the investment, administration, distribution, or taxation of the Settlement Fund or the Net Settlement Fund beyond the amounts allocated to Eligible Class Members.

15. All of JND's fees and expenses incurred in connection with the administration of the Settlement and estimated to be incurred in connection with the distribution of the Net Settlement Fund as set forth in Exhibit A to the Segura

Affidavit are approved, and Plaintiff's Counsel are authorized to direct payment out of the Settlement Fund to JND in payment of any such outstanding fees and expenses.

16. The Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and grants such other and further relief as the Court deems appropriate.

Dated: January 24, 2025

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Defendants.

[PROPOSED] CLASS DISTRIBUTION ORDER

The Court, having considered Plaintiff's Unopposed Motion for Class Distribution Order (the "Motion"), and for good cause shown, IT IS HEREBY ORDERED that:

1. The Motion is GRANTED.
2. The Settlement Administrator shall implement the proposed Plan of Distribution as described in the Motion.

IT IS SO ORDERED this ____ day of _____, 2025.

Vice Chancellor Nathan A. Cook